

A Mohd Yusri bin Mangsor & Anor v Public Prosecutor and another appeal

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS A-05-344-12 OF 2011 AND A-05-345-12 OF 2011
 AZAHAR MOHAMED, DAVID WONG AND ZAWAWI SALLEH JJCA
 21 APRIL 2014

C *Criminal Law — Dangerous Drugs Act 1952 — s 39B(1)(a) — Cannabis weighing 83,866g — Appeal against conviction and sentence — Drugs found in gunny sacks inside chicken coop behind a house — Failure to establish prima facie case — Failure to establish that second appellant was occupier of the house*
D *— Material and seriously irreconcilable contradictions in evidence of prosecution witnesses — Whether trial judge failed to give reasons for accepting contradicting evidence — Whether exclusivity of possession proven — Whether conviction unsafe*

E *Criminal Procedure — Appeal — Appellate intervention, principles of — Whether situations where intervention justified*

F On 26 July 2009, Zabidi ('SP5') had gone to a house in Changkat Jering ('the said house') to meet the second appellant. According to SP5, the second appellant had gone out while SP5 and the first appellant were watching television in the said house. Subsequently, the second appellant returned driving a Proton Iswara Aeroback and parked the car at the garage. SP5 had looked through the window and saw the second appellant dragging gunny sacks from the car towards the back of the house. SP5 asked the second appellant what was in the sacks to which the second appellant replied: 'makanan ayam'. The first appellant had gone to help the second appellant to drag the sacks. Later, the police raided the house. The raiding officer, ASP Balasubramaniam ('SP7') and his team found the gate and door of the said house wide open. Nothing incriminating was found on both the appellants.
G However, in a chicken coop at the back of the house, SP7 found ten gunny sacks containing 91 slabs of cannabis weighing of 83,866g. The appellants were charged for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'). Both appellants denied carrying the gunny sacks from the car. The
H second appellant's evidence was that he had left the house to have dinner. It was also contended that the second appellant was not an occupier of the said house. The High Court found the appellants guilty as charged and sentenced them to death. Aggrieved, the appellants appealed against conviction and sentence on the grounds that the trial judge erred by merely accepting the evidence of the
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prosecution witnesses, especially SP5, at the face value without subjecting them to a maximum evaluation. A

Held, allowing the appeal and setting aside the conviction and sentence:

- (1) The prosecution failed to establish a prima facie case against both the appellants. It was doubtful whether the second appellant had access to the Proton Iswara. The fact of being present in the living room at the time of raid, was insufficient for the purpose of proving that the second appellant was an occupier of the house. There was no evidence to show that the second appellant was the tenant or the owner of the said house. Although SP5 stated that both the appellants dragged the gunny sacks from the car to the backyard, the investigating officer ('SP9') confirmed that there were no drag marks or shoe print on the ground leading to the backyard (see para 25(a)(b)(c)). B C
- (2) SP5's evidence had material contradictions and was seriously irreconcilable with the SP6, SP7 and SP9's evidence. The evidence of the prosecution's witnesses were not at all consistent. It is trite that when prosecution's witnesses have given conflicting evidence on material facts in issue, the trial judge must make specific findings on the point and in so doing must give reasons for rejecting one version and accepting the other. Unfortunately, this was not done by the learned judge (see para 25(e)). D E
- (3) Others could easily gain access to the house as the main entrance and the house gate were not locked. It is trite that to sustain a conviction for the offence of possession under the DDA, exclusivity of possession must be proved by the prosecution (see para 25(h)). F

[Bahasa Malaysia summary

Pada 26 Julai 2009, Zabidi ('SP5') telah pergi ke sebuah rumah di Changkat Jering ('rumah tersebut') untuk berjumpa perayu kedua. Mengikut SP5, perayu kedua telah keluar sementara SP5 dan perayu pertama sedang menonton televisyen di dalam rumah tersebut. Berikutan itu, perayu kedua pulang dengan memandu sebuah proton Iswara Aeroback dan meletakkan kereta di garaj. SP5 melihat melalui tingkap dan melihat perayu kedua menarik sekarung guni dari kereta ke arah belakang rumah. SP5 bertanya kepada perayu kedua apa yang ada di dalam karung yang mana perayu kedua menjawab: 'makanan ayam'. Perayu pertama telah pergi membantu perayu kedua menarik karung. Kemudian, polis telah menyerbu rumah tersebut. Pegawai serbuan, ASP Balasubramaniam ('SP7') dan pasukannya menemui pagar dan pintu rumah tersebut terbuka luas. Tiada sebarang tanda menunjukkan kerbersalahan atas kedua-dua perayu. Tetapi, di dalam reban ayam di belakang rumah, SP7 menemui sepuluh karung guni yang mengandungi 91 keping kanabis seberat 83,866g. Perayu-perayu didakwa untuk kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Kedua-dua perayu G H I

- A menafikan membawa karung guni dari kereta. Keterangan perayu kedua adalah dia telah meninggalkan rumah untuk makan malam. Turut diujahkan bahawa perayu kedua bukan penghuni rumah itu. Mahkamah Tinggi mendapati perayu-perayu bersalah sebagaimana yang dituduh dan menghukum mereka dengan hukuman mati. Terkilan, perayu-perayu merayu terhadap sabitan dan hukuman atas alasan bahawa hakim bicara terkhilaf dengan semata-mata menerima keterangan saksi pendakwaan, terutama SP5, pada akhirnya tanpa mengenakan penilaian maksimum kepada mereka.

C **Diputuskan**, membenarkan rayuan dan mengetepikan sabitan dan hukuman:

- (1) Pihak pendakwaan gagal mengemukakan kes prima facie terhadap perayu-perayu. Adalah diragui sama ada perayu kedua mempunyai akses kepada Proton Iswara. Fakta kehadiran perayu di ruang tamu sewaktu serbuan, tidak mencukupi sebagai tujuan membuktikan bahawa perayu kedua merupakan penghuni rumah. Tidak terdapat keterangan untuk menunjukkan bahawa perayu kedua merupakan penyewa atau pemilik rumah itu. Walaupun SP5 menyatakan bahawa kedua-dua perayu menarik karung guni dari kereta ke laman belakang, pegawai penyiasat ('SP9') mengesahkan tiada bekas tarikan atau tanda kasut di atas tanah menuju ke laman belakang (lihat perenggan 25(a)(b)(c)).
- (2) Keterangan SP5 mempunyai percanggahan material dan tidak selaras dengan keterangan SP6, SP7 dan SP9. Adalah nyata bahawa apabila saksi pihak pendakwaan memberikan keterangan bercanggah pada fakta material yang dibicarakan, hakim bicara perlu membuat dapatan khusus pada perkara tersebut dan dengan berbuat demikian perlu untuk memberikan alasan-alasan untuk menolak satu versi dan menerima yang lain. Malangnya, ini tidak dilakukan oleh Yang Arif hakim (lihat perenggan 25(e)).
- (3) Orang lain boleh mendapatkan akses mudah ke rumah tersebut memandangkan pintu utama dan pagar rumah tidak dikunci. Adalah undang-undang nyata untuk mengekalkan sabitan bagi kesalahan pemilikan di bawah ADB, sifat eksklusif pemilikan perlu dibuktikan oleh pihak pendakwaan (lihat perenggan 25(h)).]

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Notes

For a case on principles of appellate intervention, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) para 804.

For cases on s 39B(1)(a) of the Dangerous Drugs Act, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 481–669.

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Cases referred to

Abdullah Zawawi bin Yusoff v PP [1993] 3 MLJ 1, SC (refd)

Choo Yoke Choy v PP [1992] 2 MLJ 632, SC (refd)

- Dato' Mokhtar bin Hashim & Anor v PP* [1983] 2 MLJ 232; [1983] CLJ (Rep) 101, FC (refd) **A**
- Gooi Loo Seng v PP* [1993] 2 MLJ 137; [1993] 2 AMR 27 1135, SC (refd)
- Kumaran all Sappani v PP* [2012] 6 MLJ 153; [2011] 3 CLJ 251, FC (refd)
- Lee Chee Meng v PP* [1992] 1 MLJ 322; [1992] 1 CLJ 345, SC (refd)
- Magendran all Mohan v PP* [2011] 6 MLJ 1; [2011] 1 CLJ 805, FC (refd) **B**
- Mohamad Yazri bin Minhat v PP* [2003] 2 MLJ 241; [2003] 2 CLJ 65, CA (refd)
- Pang Chee Meng v PP* [1992] 1 MLJ 137, SC (refd)
- Perembun (M) Sdn Bhd v Conlay Construction Sdn Bhd* [2012] 4 MLJ 149, CA (refd) **C**
- PP v Abdul Rahman bin Akif* [2007] 5 MLJ 1, FC (refd)
- PP v Fom It Cheong* [1991] 1 CLJ 160, HC (refd)
- PP v Johar Mustafa* [2004] 5 CLJ 187, HC (refd)
- PP v Kang Ho Soh* [1992] 1 MLJ 360, HC (refd) **D**
- PP v Lai Ah Bee* [1974] 2 MLJ 74 (refd)
- Saludin bin Surif v PP* [1997] 3 MLJ 317, CA (refd)
- Sivalingam all Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545, CA (refd)

Legislation referred to **E**

Dangerous Drugs Act 1952 s 39B(1)(a)

Appeal from: Criminal Trial No 45A-02 of 2010 (High Court, Taiping)

P Ravee (P Ravee & Co) for the appellants. **F**
Nurulhuda Nur'ain bt Mohd Nor (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court): **G****INTRODUCTION**

[1] This appeal is directed against the judgment dated 18 November 2011 passed by the High Court at Taiping, Perak wherein the High Court found the appellants guilty for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA1952') and sentenced them to death. **H**

[2] Aggrieved, the appellants lodged this appeal to challenge the said impugned conviction and sentence. **I**

[3] The charge against the appellants reads as follows:

Bahawa kamu pada 26 Julai 2009 jam lebih kurang 8.00 malam di sebuah rumah alamat di No: C1 248, Kampung Changkat Ibol, Bukit Gantang, 34850 Changkat

A Jering, Taiping di dalam Daerah Larut, Matang dan Selama di dalam Negeri Perak, telah didapati mengedar dadah berbahaya iaitu 83,866 gram Cannabis dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

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C [4] We have heard learned counsel for the appellants and learned deputy public prosecutor ('DPP') at some length. We have also scrutinised the records available before us. We are mindful that this is a factual based appeal. It is trite that an appellate court will be slow to interfere with the findings of facts and judicial appreciation of the facts by the trial court to which the law entrusts the primary task of evaluation of the evidence. However, there are exceptions. Where:

- D** (a) the judgment is based upon a wrong premise of fact or of law;
- (b) there was insufficient judicial appreciation by the trial judge of the evidence of circumstances placed before him;
- (c) the trial judge has completely overlooked the inherent probabilities of the case;
- E** (d) that the course of events affirmed by the trial judge could not have occurred;
- (e) the trial judge had made an unwarranted deduction based on faulty judicial reasoning from admitted or established facts; or
- F** (f) the trial judge had so fundamentally misdirected himself that one may safely say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion, then an appellate court will intervene to rectify that error so that
- G** injustice is not occasioned,

H then an appellate court will intervene to rectify that error so that injustice is not occasioned (see *Perembun (M) Sdn Bhd v Conlay Construction Sdn Bhd* [2012] 4 MLJ 149, (CA); *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545 (CA)).

I [5] Having scrutinised the entire evidence adduced before the court, we are of the considered opinion that this is a case in which appellate intervention is warranted. Therefore, we unanimously allowed the appeal and set aside the conviction and sentence passed by the High Court. The appellants are acquitted and discharged.

[6] We now give our reasons for so deciding.

SALIENT FACTS

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[7] The salient facts forming the basis for the conviction and sentence of the appellants was that on 26 July 2009, Zabidi bin Abdullah ('SP5'), a disabled person, went to a house at No C1 248, Kampung Changkat Ibol, Bukit Gantang, Changkat Jering, Taiping ('the said house'), to meet the second appellant. They then travelled to Juru in SP5's car and reached back to the said house at about 7pm. According to SP5, when they arrived at the house, a silver coloured Proton Iswara NBW 7795 was parked at the porch, and a Datsun AAD 7355 was parked at the garage located at the side of the house.

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[8] On arrival, there was another Proton Iswara which followed SP5's car into the compound and stopped at the garage behind the Datsun AAD 7355. SP5 saw the second appellant spoke to the person in the car. The car left moments later.

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[9] SP5 was wheeled inside the house by the first appellant. SP5 took some *syabu* while inside the living room. Both SP5 and the first appellant were watching the television programme when the second appellant came in and told SP5: 'duduk sat, saya nak pergi hantar kereta'.

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[10] The second appellant returned 20 minutes later with the Proton Iswara Aeroback and parked the car at the garage. According to SP5, the second appellant did not come into the living room after 20 minutes. SP5 then turned towards the window and saw the second appellant carrying a gunny sack from the car towards the back of the house.

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[11] After a while, the second appellant still did not come into the living room. SP5 then turned towards the window and saw the second appellant carrying another gunny sack on his back to the back of the house. SP5 asked the second appellant what was in the sack in which the second appellant replied: 'makanan ayam'.

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[12] SP5 heard the second appellant called out to his brother for help to carry the gunny sacks. Both the appellants were seen dragging two gunny sacks each from the car towards the back of the house. Subsequently, both the appellants came into the house. According to SP5, Mat Shah ('SP6') came shortly afterwards.

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[13] At about 8pm, the police raided the house. According to the raiding officer, ASP Balasubramaniam ('SP7'), his team ambushed the said house. The gate was wide open so was the door of the said house.

[2014] 4 MLJ

- A** [14] Nothing incriminating was found on both the appellants, SP5 and SP6. A further search was conducted outside the house in the presence of the four arrested persons. There was a chicken coop at the back of the house and SP7 found ten gunny sacks covered by blue canvass: eight sacks were in white, one in yellow and another one in green. All the sacks were tied at the mouth and had the word 'THAILAND' written on them. A total of 91 slaps of cannabis wrapped in transparent plastic and aluminium foil were found in those sacks.
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- C** [15] Puan Nor Hazili bt Aznan ('SP4'), a government chemist, had conducted the chemical analysis and confirmed those slabs to be cannabis weighing of 83,866g in total.

THE DEFENCE CASE

- D** [16] Both the appellants denied carrying the gunny sacks from the car. The second appellant's evidence was that he left the house to have dinner with one Fadil, who drove a white Honda. He came back to the said house at about 7.45pm.

- E** [17] The first appellant's evidence was that at about 4pm, he saw his brother, the second appellant, spoke to the driver of a red Honda. The second appellant then left in the red Honda and returned at about 7pm. The second appellant then asked him to wheel the driver (SP5) into the house. When he went out to the front porch, he saw a white Honda and a silver coloured Proton Iswara inside the house compound. The second appellant told him that he was going out for dinner, then left the house in the white Honda.
- F**

- G** [18] The first appellant said that he was chatting with SP5 in the living room. SP6 arrived on a motorcycle and asked for the second appellant. The first appellant informed SP6 was out having dinner. The second appellant came back around 7.45pm. The house was subsequently raided.

- H** [19] The first appellant said that the Proton Iswara NBW 7795 parked at the porch was not in use. The car was locked and DW3, had possession of the keys. This was supported by DW3. She also told the court that the second appellant was not an occupier of the said house.

THE APPEAL

- I** [20] Before us, the central plank of the appellants' argument was that the learned trial judge erred in law and in facts in holding that the prosecution had succeeded in establishing a prima facie case against both the appellants by merely accepting the evidence of the prosecution witnesses, especially SP5, at the face value without subjecting them to a maximum evaluation. It was

submitted by learned counsel for the appellants that the evidence of the prosecution witnesses must not be accepted at face value. Their evidence have to be tested, scrutinised and evaluated to determine whether they suffer from any infirmities, gaps or contradictions of a kind resulting that the main ingredients of the offence are not proven. It is a test of credibility. The evidence has to be scrutinised properly and not perfunctorily, cursorily and superficially. If the evaluation of the evidence result in doubt in the prosecution's case, then a prima facie case had not been made out (see *Magendran all Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805).

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[21] According to learned counsel for the appellants, had the learned trial judge subjected the prosecution witnesses to a maximum evaluation and viewed the evidence from all angles, the learned trial judge would not have called the appellants to enter their defence (see *Gooi Loo Seng v Public Prosecutor* [1993] 2 MLJ 137; [1993] 2 AMR 27 1135 (SC)). Learned counsel for the appellants strongly urged this court to reverse the decision of the learned trial judge.

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[22] In reply, learned DPP submitted that the learned trial judge accepted and believed the testimony of SP5. The reasons given by His Lordship for accepting and believing the testimony of SP5 may be summarised as follows:

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- (a) SP5 is a credible witness and had candidly admitted that he took drugs before he went to Juru and while he was at the appellants' house;
- (b) SP5 was not intoxicated as his conduct before and during the raid was very much sober and he was aware of his surroundings (see *Kumaran all Sappani v Public Prosecutor* [2012] 6 MLJ 153; [2011] 3 CLJ 251 (FC)); and
- (c) SP5 stated that he saw both the appellants carrying those gunny sacks from the Proton Iswara to the backyard. Therefore, they were in possession of the offending drugs.

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[23] In the course of the arguments, learned DPP had reminded us on the danger of interfering with the finding of credibility of a witness, which is primarily a matter for the trial judge, who had seen and heard the witnesses. (see *Dato' Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232; [1983] CLJ (Rep) 101).

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OUR FINDINGS

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[24] What constitutes possession is a question of law. But whether in a particular case someone is in possession of something is a question of fact (see *Public Prosecutor v Kang Ho Soh* [1992] 1 MLJ 360 at p 371). It is trite that to establish possessions for the purpose of the DDA 1952, the court has to

- A consider two separate questions. Firstly, whether the accused was in possession of the offending drugs and secondly, whether the accused had knowledge of the offending drugs but not the nature thereof (see *Public Prosecutor v Abdul Rahman bin Akif* [2007] 5 MLJ 1; *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 2 MLJ 241; [2003] 2 CLJ 65; *Public Prosecutor v Johar Mustafa* [2004] 5 CLJ 187).
- B

[25] We have scrutinised and considered the evidence adduced by the prosecution carefully and we are of the considered opinion that the prosecution had failed to establish a prima facie case against both the appellants. Our reasons are as follows:

- C
- (a) it remains doubtful whether the second appellant had access to the Proton Iswara. SP6 had stated that when he arrived at the house at 7.40pm, he parked his motorcycle behind the Datsun AAD 7735 in the garage. He had not seen the Proton Iswara. Photograph P2E taken by
- D Razali bin Seman ('SP1') showed that Proton Iswara NBW 7795 was parked under the porch at the time of the raid. There is no conceivable reason for the second appellant to reverse the car under the porch after he had unloaded the gunny sacks;
- E (b) the facts of being present in the living room at the time of raid, are insufficient for the purpose of proving that the second appellant was an occupier of the house. There is no evidence to show that the second appellant is the tenant or the owner of the said house (see *Public Prosecutor v Lai Ah Bee* [1974] 2 MLJ 74; *Public Prosecutor v Fom It Cheong* [1991] 1 CLJ 160). Further, it was not proven that the second
- F appellant was having possession of the car keys. Whether the keys seized by SP7 were the car keys remain an unanswered question. DW3 also stated that she was having possession of the car keys at the material time;
- G (c) another evidential point relates to the issue whether the appellants were carrying the gunny sacks which contained the dangerous drugs. SP5 had stated that both the appellants were dragging the gunny sacks from the car to the backyard. The investigating officer, SP9 had confirmed during cross-examination that there were no drag marks or shoe print on the
- H ground leading to the backyard;
- (d) SP5 stated that both the appellants came into the house after unloading the gunny sacks. SP6 came shortly afterwards. His evidence contradicted SP6's evidence when SP6 stated that when he arrived, the second appellant was not in the house and the first appellant had
- I informed him that the second appellant had went out for dinner. The second appellant's defence that he went out for dinner and was sent home by Fadil in the Honda was further supported by SP7's evidence that it was reported by Inspector Ikhbal that a Honda car had dropped the second appellant in front of the house and left;

- (e) SP5's evidence had material contradictions and was seriously irreconcilable with the SP6, SP7 and SP9's evidence on the material point. It is clear that the evidence of the prosecution's witnesses are not at all consistent. This give rise to serious doubt on the credibility and reliability of SP5's evidence. It is trite that when prosecution's witnesses have given conflicting evidence on material facts in issue, the trial judge before whom such evidence is led must make specific findings on the point and in so doing must give reasons for rejecting one version and accepting the other. Unless this is done, it is unsafe for the court to rely on any evidence before it. Unfortunately, this was not done by the learned judge; A
- (f) it has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the learned trial judge. When witnesses makes inconsistent statements in their evidence either at one state or at two stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses. On the other hand one cannot be unmindful of the proposition that court cannot mechanically reject the evidence of any witness. With regard to appreciation of evidence in criminal cases it would be of importance to quote what Sir John Woodroffe & Amir Ali had to say in their work on — 'Law of Evidence', (18th Ed), Vol 1 at p 471: B
- No hard and fast rule can be laid down about appreciation of evidence. It is after all a question of fact and each case has to be decided on the facts as they stand in that particular case. Where a witness makes two inconsistent statements in his evidence with regard to a material fact and circumstance, the testimony of such a witness becomes unreliable and unworthy of credence. C
- (g) further, it is the paramount duty of the court to consider entire evidence of a witness brought on record in the examination-in-chief, cross-examination and re-examination. In other words courts must take an overall view of the evidence of each witness; and D
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- (h) granted that the first appellant was the occupier of the house and the second appellant had visited the house frequently and the second appellant had also on previous occasions supplied small doses of drugs to SP6. But this evidence is insufficient to establish that they have possession of the alleged drugs. The raiding officer and the investigating officer had admitted that others could easily gain access to the place as the main entrance and the house gate were not locked. It is trite that to sustain a conviction for the offence of possession under the DDA 1952, exclusivity of possession must be proved by the prosecution. It is therefore incumbent on the prosecution to discharge this burden (see *Abdullah Zawawi bin Yusoff v Public Prosecutor* [1993] 3 MLJ 1; *Pang Chee Meng v Public Prosecutor* [1992] 1 MLJ 137; *Saludin bin Surif v* F
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A *Public Prosecutor* [1997] 3 MLJ 317; *Lee Chee Meng v Public Prosecutor* [1992] 1 MLJ 322; [1992] 1 CLJ 345; *Choo Yoke Choy v Public Prosecutor* [1992] 2 MLJ 632).

B [26] The surrounding circumstances of this instance case, taken as a whole, would only cause suspicion against both the appellants. However, suspicion alone is insufficient to form the basis of the conviction. There was doubt in this case, the benefit of which it would have been safer to give to the appellants.

C CONCLUSION

D [27] Based on the evidence before us and with all the infirmities and the glaring discrepancies in the prosecution's case as discussed earlier, it is our considered opinion that the conviction was plainly unsafe having regard to the facts and circumstances of this case. When on overall view of the evidence is taken, the irresistible and inescapable conclusion one could arrive upon is that the prosecution has failed to establish its case beyond reasonable doubt and the appellants are entitled to benefit of this doubt, which entitles them to earn an acquittal from the charge.

E [28] In the result, we allowed the appeal herein and set aside the conviction and sentence imposed on the appellants. Subsequently, the appellants are acquitted and discharged.

F *Appeal allowed, conviction and sentence set aside.*

Reported by Kanesh Sundrum

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